



POLICE DEPARTMENT

July 30, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Johnathon Calcagni
Tax Registry 933668
62 Precinct
Disciplinary Case No. 82722/07

The above-named member of the Department appeared before me on April 29, 2009, charged with the following:

1. Said Police Officer Johnathon Calcagni, assigned to the 62 Precinct, on or about October 24, 2006, while on sick report, in the County of Nassau, between the hours of approximately 1300 hours to 1600 hours and 2000 hours to 2140 hours, was wrongfully and without just cause absent from his residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 – REPORTING SICK

2. Said Police Officer Johnathon Calcagni, assigned to the 62 Precinct, on or about October 25, 2006, while on sick report, in the County of Nassau, between the hours of approximately 1250 hours to 1350 hours, was wrongfully and without just cause absent from his residence without permission of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.

P.G. 205-01, Page 2, Paragraph 4 – REPORTING SICK

3. Said Police Officer Johnathon Calcagni, assigned to the 62 Precinct, or about and between October 19, 2006 and November 17, 2006, in the county of Nassau, while on sick report, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Officer did falsely represent to the District Surgeons the nature and degree of his physical limitations, and/or the nature and degree of his injury and/or did provide misleading information to the District Surgeons regarding the nature and degree of his physical limitations, and/or the nature and degree of his injury, knowing that said statements were false and/or misleading, in that said Officer advised the District Surgeons that he was unable to get around without using a crutch, when in fact said Officer was observed walking without a crutch. *(As Amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Lisa M. McFadden, Esq., Department Advocate's Office, and the Respondent was represented by Craig R. Hayes, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE PRESENTED IN MITIGATION

The Respondent, who is assigned to the 62 Precinct, performing full duty, testified that on September 13, 2006, he suffered a lower back injury and a contusion on his leg as the result of a roof-top pursuit of a robbery suspect. He experienced "shooting pain" in his legs. He was transported by ambulance to the hospital where he was treated and released. He was placed on sick report that day. He was granted a pass which permitted him to be out of his residence daily between 1600 hours and 2000 hours.

With regard to Specification No. 1, the Respondent testified that on October 24, 2006, at about 1300 hours he left his residence only because his wife, [REDACTED]

[REDACTED] He recalled that "we both panicked." He tried to call the sick desk to get permission to be out of his residence but the line was busy. He drove her to [REDACTED]

[REDACTED] The Respondent acknowledged that he had his cell phone with him and that he could have called the sick desk and requested an emergency

pass to be out of residence, but he did not call. Their visit to the [REDACTED] took longer than three hours. When they left the [REDACTED] the Respondent drove to his mother's house to inform her of "what was going on and stuff." He then drove home because "I knew my pass was ending."

The Respondent testified that he left his residence again that day at about 2140 hours because "we didn't have much food in the house" and his wife was hungry. They "went up the block" and got "something to eat really quick." He did not call the sick desk to get permission to be out of his residence.

With regard to Specification No. 2, the Respondent testified that on October 25, 2006, he called the sick desk and received permission to be out of residence to attend physical therapy. When he finished physical therapy at about 1245 hours, he did not return directly to his residence. Rather, between 1250 hours and 1350 hours, he met his wife for lunch. He did not call the sick desk to get permission to be out of his residence after he finished physical therapy. The Respondent testified that at the time he "didn't think there was any problem with that" but that he now realizes that going to lunch without permission violates sick desk procedures.

With regard to Specification No. 3, the Respondent testified that between October 19, 2006 and November 17, 2006, he attended physical therapy two to three times a week and that after physical therapy sessions "for the most part" he did not use a crutch to walk because "it felt better." The level of his pain he felt varied and, as a result, "I had my good days and my bad days." He testified that "on good days" he could walk short distances without a crutch. He testified that on mornings when he had an appointment at the District Surgeon's office, he always used a crutch because in the morning he felt "a

lot of pain” and because he had to walk “about one quarter mile” from the parking lot to the District Surgeon’s office. He admitted that between October 19, 2006 and November 17, 2006, on multiple occasions he told District Surgeons that he used his crutch all the time and that he needed his crutch to walk around all the time even though that was not entirely true. He never told District Surgeons that he had his good days and his bad days or that he did not need his crutch to walk short distances. He realized then that he was misleading District Surgeons as to his ability to walk without a crutch but he did not feel that they understood how much pain he was feeling and that he was not ready to perform police duties because he was still in a lot of pain and he believed that he needed more time to heal. Looking back, he now realizes that with regard to needing a crutch to walk he should have used the word “often” instead of “always” or “all the time.” He apologized to the Department for “breaking the rules.”

On cross-examination, the Respondent agreed that he told Dr. Sullivan that he was unable to walk and get around without his crutch and that he used it all the time. Although he could not recall what date he said this, he agreed that it could have been on October 19, 2006, and that he said the same thing to other physicians during other visits to the Medical Division between October 19, 2006 and November 17, 2006. The Respondent conceded that on October 24, 2006, at 1300 hours he did not call for an ambulance, that when he and his wife came out of their residence he was not using a crutch, that they did not rush to get into their car and that they dropped their dog off at his mother’s house, which was two blocks away, on the way to his [REDACTED] in case his wife was hospitalized. When he and his wife left his residence again that day and went to a restaurant he was not using a crutch. The Respondent agreed that on October

25, November 8, 9 and 17, 2006, he went out without using a crutch but that when he went to see District Surgeons on November 2, 6 and 17, 2006, he used a crutch.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 20, 2004. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded guilty to being absent from his residence while on sick report without the permission of his District Surgeon or the Sick Desk Supervisor on two consecutive days. On October 24, 2006, he was absent on two occasions. On the first occasion he was absent for three hours and on the second occasion he was absent for one hour and forty minutes. On October 25, 2006, he was absent on one occasion for about one hour.

The Respondent has also pleaded guilty to engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that between October 19, 2006 and November 17, 2006, he knowingly made false representations to District Surgeons regarding the nature and degree of his physical limitations in that he advised District Surgeons that he was unable to walk or get around without using a crutch.

The testimony the Respondent offered to explain his misconduct does not serve to mitigate his misconduct. With regard to his two absences on October 24, 2006, since he had time to drop his dog off at his mother's house before he drove his wife to her

gynecologist's office, he clearly had time to use his cell phone to call the sick desk and request an emergency pass, as he acknowledged. Also, since he was permitted to be out of residence every day between 1600 hours and 2000 hours, the Respondent's explanation that he went out for food between 2000 hours and 2140 because there "wasn't much" food in the house does not excuse this unauthorized absence. With regard to his one hour absence on October 25, 2006, he knew, or should have known, that since he was authorized to be out of residence only to attend physical therapy (PT), after his PT session he was supposed to return directly to his residence. I do not credit his testimony that he genuinely believed then that it was not a problem for him to remain out of residence after PT for the purpose of having lunch with his wife.

The most serious misconduct the Respondent has pleaded guilty to having committed is the false representations he made to District Surgeons that he was unable to walk or get around without using a crutch. He admitted that he made these false representations because he felt that he was not ready to resume police duties.

The Assistant Department Advocate recommended that the penalty to be imposed on the Respondent consist of a 20-day suspension and forfeiture of 30 vacation days, for a total loss of 50 days, and that he serve one year on dismissal probation.

In Disciplinary Case No. 82777/07 (approved on January 16, 2008), a nine-year member with no prior disciplinary record received a 20-day suspension, forfeited 30 vacation days, and was placed on one year dismissal probation after he pleaded guilty to being absent from his residence while on sick report without the permission of the Sick Desk Supervisor on three occasions and to having exaggerated the extent of his injuries to

his District Surgeon in that he falsely claimed that he could not lift a gallon of milk, was unable to drive, and, as here, almost always used a cane.

In Disciplinary Case No. 82795/07 (approved on January 16, 2008), an eight-year member with no prior disciplinary record forfeited a 20-day suspension and 30 vacation days and was placed on one year dismissal probation after he pleaded guilty to being out of his residence while on sick report without permission and exaggerating the extent of his injuries to his District Surgeon in that he falsely claimed that he was unable to drive or walk. The member was observed driving a vehicle with a boat in tow which the member then launched.

Accordingly, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that the Respondent be suspended for 20 days and that he forfeit 30 vacation days, for a total forfeiture of 50 days.

Respectfully submitted,

R. W. Vinal

Robert W. Vinal

Assistant Deputy Commissioner-Trial

APPROVED

AUG 19 2009

Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER